

### **Remarks**

With the cancellation of claim 15, claims 9-14 and 16 remain pending in the above-referenced application and are submitted for the Examiner's reconsideration. Although the amendment to claim 11 includes underlined subject matter that Applicants had assumed had already been entered by way of a previous amendment, such a prior amendment actually was never made officially. Therefore, Applicants are making this amendment now to claim 11, in order to clarify the official prosecution history for this application.

In the objection to the specification, the Examiner proposes changing the text of line 11, but does not say line 11 of which particular page of the specification. Once the Examiner identifies the particular page he has in mind for this change, Applicants shall address it.

In response to the objection to the drawings, Applicants have canceled claim 15. Therefore, withdrawal of this objection is requested.

Claims 9, 10, and 12-16 stand rejected under 35 U.S.C. § 112, ¶1, as failing to comply with the written description requirement. According to the Examiner, the specification does not describe the "tangential plane" recited in the claims. That assertion is false. At the very least, the recited tangential plane is shown in Figure 2 as the horizontal line with which the beam reflected off of substrate 1 forms angles  $\alpha$  and  $\beta$ . Unless the Examiner can point to some authority that prohibits an Applicant from relying on the originally filed drawings to support a particular claim limitation, Applicants submit that no basis exists for this rejection.

Claims 9, 10, and 14, and 16 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over United States Patent No. 5,764,365 to Finarov ("Finarov I") in view of United States Patent No. 5,333,052 to Finarov ("Finarov II") and United States Patent No. 3,985,447 to Aspnes ("Aspnes"). The Examiner yet again has relied on Finarov I to show the recited "tangential plane" of the claims. As recited in the claims, this tangential plane does not intersect the substrate at the incidence point of a beam. According to the Examiner, "[a]s for the tangential plane not intersecting the substrate in an area of incidence, Finarov states that the angle is determined from the incidence point being in the focal plane of the objective lens; whereas, the focal plane would be tangent to the incidence point." Office Action at page 4. What would have

been helpful to Applicants would have been an identification of the focal plane of a specific objective lens, since Finarov I describes several such lens. Further, what this statement ignores is the additional limitation that the recited tangential plane not intersect the substrate at the incidence point. Although the Examiner does not inform Applicants of the focal point of which specific objective lens he is relying on to show the recited tangential plane, all of the focal planes discussed in Finarov I fail to meet this limitation.

In the detailed description of Finarov I, the first mention of a focal plane is that of objective lens 75. Specifically, according to Finarov I, the “focal plane is at the plane of sample 57.” Column 5, lines 29-30. In other words, this focal plane intersects the plane of sample 57 and therefore cannot meet the tangential plane of the claims, which do not intersect the substrate at the incidence point.

The next description of a focal plane in Finarov I is that of objective lens 76. Column 5, lines 62-65. But in this focal plane the beam passes through at a ninety degree angle to diaphragm 77 located in this plane. This plane has nothing to do in forming an angle with a beam reflected from a substrate.

Column 6, lines 58-60, contains the description of the next focal plane, which is that of lens 164. Unlike the tangential plane, this focal plane has nothing to do with the measurement of a reflected beam angle but instead deals with the focusing of a reflected beam onto a pinhole of a diaphragm.

The next focal plane is that of lens 152. Since the sample is located in that focal plane, one cannot say that the focal plane does not intersect the substrate. Column 9, lines 45-48.

The same deficiency characterizes the focal plane of lens 210. Since the sample/substrate is located in this plane, it intersects the plane. Therefore, it fails to meet the tangential plane of the claims.

Therefore, notwithstanding the Examiner’s reliance on some unspecified focal plane in Finarov I, none of the focal planes described in Finarov I meets the tangential plane recited in the claims.

As for Finarov II and Aspnes, neither of these references overcomes the deficiency of Finarov I. Accordingly, withdrawal of this rejection is respectfully requested.

As for the prior art rejections of claims 11-13 and 15, Applicants submit that none of the additional references relied on by the Examiner in those rejections overcomes the deficiencies noted with respect to Finarov I. Accordingly, withdrawal of these rejections is respectfully requested.

Applicant asserts that the present invention is new, non-obvious, and useful. Consideration and allowance of the claims are requested.

Respectfully submitted,

KENYON & KENYON

By: *Lois agent (B.No. 41,172)*

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By: *Rich L. Mayer*  
Richard L. Mayer  
Reg. No. 22,490

One Broadway  
New York, NY 10004  
(212) 425-7200